

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



JOHN CALVIN SETH LEHMANN,

Plaintiffs,

v.

24-CV-531 (JLS) (HKS)

ERIE COUNTY DEPARTMENT OF
SOCIAL SERVICES, MARIE
CANNON, and KELLIE POYNTON-
GALLAGHER,

Defendants.

DECISION AND ORDER

On June 3, 2024, Plaintiff John Calvin Seth Lehmann filed a Notice of Removal with this Court. Dkt. 1. In his civil cover sheet, Plaintiff indicated that he was removing a case under Index Number 24-47885, which had been assigned to Hon. Frank Caruso. *Id.* at 18.¹ Plaintiff also included a substantive document titled “Writ of Habeus [sic] Corpus.” *See id.* at 3-17. In a subsequent motion to opt out of ADR, Plaintiff acknowledged that he “filed a similar Writ of Habeus [sic] Corpus with Erie County Family Court, Orleans County Court” under Index Number 24-47885. *See* Dkt. 3 at 2. He further stated that he was “denied access” to both “Family Court and the Supreme Court in the 8th District” and, thereafter, “filed for removal” with this Court. *See id.* at 6.

¹ Page numbers refer to the CM/ECF generated numbering in the header of each page.

This Court referred the case to United States Magistrate H. Kenneth Schroeder, Jr. for all proceedings under 28 U.S.C. §§ 636(b)(1)(A), (B), and (C). Dkt. 2. On July 26, 2024, Defendants moved to dismiss. Dkt. 14.² Plaintiff opposed the motion, Dkt. 18, and Defendants replied. Dkt. 19. Plaintiff also moved for leave to amend his Complaint on August 26, 2024. Dkt. 20. Defendants opposed the motion. Dkt. 21. Plaintiff then filed a “Notice of Claim,” *see* Dkt. 22-23, and a letter request “for investigation into potential mail fraud, spurious items, [and] mail tampering.” Dkt. 24.

On February 18, 2025, Judge Schroeder issued a Report and Recommendation (“R&R”) addressing the motions at Dkt. 14 and Dkt. 20. *See* Dkt. 25. According to the R&R, “because the procedural and substantive requirements for removal have not been met, this Court lacks jurisdiction over this matter. . . .” *See id.* at 9. Judge Schroeder recommended, therefore, that the case “be remanded back to state court pursuant to 28 U.S.C. § 1447(c) for plaintiff to pursue whatever proceedings remain available following Judge Caruso’s decision and order denying his application for a writ of habeas corpus.” *Id.* Plaintiff then filed an “affidavit in self defense of man and estate,” Dkt. 26, which this Court construed as objections to the [25] R&R. *See* Dkt. 27. Defendants did not file a response, and the time to do so has expired.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge’s

² Defendants filed a declaration, as well as a memorandum, in support of their motion. *See* Dkt. 15, 16.

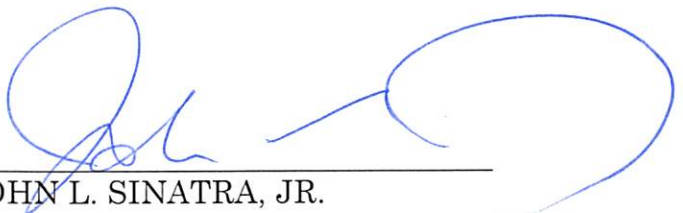
recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

This Court carefully reviewed the R&R, the objections, and the relevant record. Based on its *de novo* review, the Court accepts and adopts Judge Schroeder's recommendation.

For the reasons stated above and in the R&R, the case is remanded back to state court pursuant to 28 U.S.C. § 1447(c) for plaintiff to pursue whatever proceedings remain available following Judge Caruso's decision and order denying his application for a writ of habeas corpus. The Clerk of Court shall close this case and effectuate the remand.

SO ORDERED.

Dated: April 7, 2025
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE